

Pages 1 - 60

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE JAMES DONATO

IN RE FACEBOOK BIOMETRIC )  
INFORMATION PRIVACY LITIGATION ) No. C 15-3747 JD  
 ) San Francisco, California  
 ) May 21 2018  
 ) 10:00 a.m.

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**TRANSCRIPT OF PROCEEDINGS**

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Monday - May 21, 2018

10:02 a.m.

P R O C E E D I N G S

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**THE CLERK:** Calling Case No. 15-3747, In Re Facebook Biometric Information Privacy Litigation.

Counsel?

**MR. WILLIAMS:** Good morning, your Honor. Shawn Williams, Robbins Geller Rudman and Dowd.

I'm also here with my colleagues Patrick Coughlin and John George from my firm, and Corban Rhodes from the Labaton firm, on behalf of plaintiff.

**THE COURT:** Okay.

**MS. GOLDMAN:** Good morning, your Honor. Lauren Goldman of Mayer Brown on behalf of Facebook.

I'm here today with Archis Parasharami, who I think you met before, who will be covering the class action notice issues; with my partner Vincent Connelly, who is one of the people who will be trying the case; and with Nikki Sokol from Facebook.

**THE COURT:** All right. Okay. We're going to power through the notice issue. Why don't you both -- both come on up.

All right. Now, let's talk about a couple of things first. Who is going to do what?

1 My sense is, after reviewing everybody's papers, I think  
2 the class administrator should send the email, okay? So they  
3 can send the email notice. We're going to work out the back  
4 office part of this in a moment.

5 And then, Facebook, I want you to do one of those jewel  
6 notifications that I learned about earlier in the case, and,  
7 also, a news feed insert. Okay?

8 **MR. PARASHARAMI:** Your Honor, may I be heard on those  
9 issues?

10 **THE COURT:** Yes.

11 **MR. PARASHARAMI:** So in light of the fact that your  
12 Honor is ordering email notice, which we think is appropriate,  
13 the jewel notifications and news feed notices --

14 **THE COURT:** I think you need to get a little bit  
15 closer to the mic.

16 **MR. PARASHARAMI:** I'm sorry.

17 **THE COURT:** Just slide it towards you. Slide the  
18 thing -- yeah, okay.

19 All right. Go ahead.

20 **MR. PARASHARAMI:** So the news feed notifications and  
21 the jewel notifications would be duplicative, unnecessarily  
22 duplicative.

23 **THE COURT:** They may be duplicative, but our goal  
24 here is to give notice. And it's reasonable, in my view, for  
25 you anow to do that.

1           So we will do a jewel notice, or whatever you call it, the  
2 jewel thing with the little red light that flashes and the news  
3 feed insert.

4           I'm going to decline Messenger. I don't think that --  
5 that's necessary. I think that seems to be the least likely to  
6 get everybody, so Messenger will be declined.

7           **MR. PARASHARAMI:** Your Honor, may I be heard on the  
8 -- just a little further on the jewel notification?

9           **THE COURT:** Yes.

10          **MR. PARASHARAMI:** So the Manual for Complex  
11 Litigation says using essentially communications processes of a  
12 business should be essentially the last resort, only if there  
13 are no other feasible alternatives because of the way that it  
14 interferes with --

15          **THE COURT:** I don't agree with that. We're trying to  
16 give the best reasonable notice.

17          In my view, given your business and your platform, email  
18 is just not going to cut it. You need to get the jewel  
19 notifications and the news feed. So those will happen.

20          Now, tell me a little bit about what you did with  
21 Cambridge Analytica. So that looks to me -- now maybe I'm  
22 wrong because I do not use Facebook. I never have, because I'm  
23 a federal judge. I don't use any social media. It's not just  
24 Facebook. I don't Tweet. I don't do anything. Now,  
25 nevertheless, I understand what you do because people around me

1 use it.

2 So my understanding is your postings about Cambridge  
3 Analytica were not in news feed and not in jewel. You did  
4 something special for that; is that right?

5 **MR. PARASHARAMI:** Your Honor, I don't know the  
6 details of it, but let me try and address that question.  
7 Cambridge Analytica is a totally different situation, your  
8 Honor, because it is a communication between the company and  
9 its customers. It is not a Court ordered class notice. It's  
10 just a different fit.

11 I mean, I think to the extent that your Honor is raising  
12 the possibility of a jewel notification and -- you know, and a  
13 news feed, that probably is enough to describe what we would  
14 have to do here.

15 **THE COURT:** Well, that may be, but what did you all  
16 do with -- I'm looking at screenshots and they're not -- they  
17 don't look like news feed or jewel.

18 Is there something else you did? Was there something else  
19 Facebook did for Cambridge?

20 **MR. WILLIAMS:** Your Honor, I can talk about the news  
21 feed piece, at least briefly, because they did do that --

22 **THE COURT:** They did do a news feed for Cambridge?

23 **MR. WILLIAMS:** -- with Cambridge Analytica. And in  
24 our view it's something that is sufficient. It seems cheaper  
25 than some other forms of notice.

1       It is a -- a notice that goes directly to a user's news  
2       feed so when they open Facebook, it's the first thing that  
3       they see.

4               **THE COURT:** No, I understand that and it's ordered.  
5       We're -- what I want to know is do you know, maybe -- if you  
6       don't know, that's fine.

7       But, Mr. Williams, for example, do you know, did they do  
8       something special for Cambridge?

9               **MR. WILLIAMS:** When you say "special" in terms of the  
10      news feed?

11              **THE COURT:** Was it -- outside of the news feed and  
12      outside of jewel, did they have a separate push that they used?

13              **MR. WILLIAMS:** I don't know that. I don't know the  
14      answer to that. I do know that it was through news feed at  
15      least.

16              **THE COURT:** At least through news feed. Okay.  
17      And, Mr. Parasharami -- did I get that right?

18              **MR. PARASHARAMI:** Yes. Thank you.

19              **THE COURT:** You don't know whether they did  
20      something?

21              **MR. PARASHARAMI:** My understanding is that it's not  
22      something special or different outside of its normal channels  
23      for communicating with its own users.

24              **THE COURT:** Okay. Well, I just happened to see one  
25      this morning that is on a mobile phone. It says Facebook, and

1 it's from Facebook, and it says "Sarah," personalized to the  
2 user, and then it goes on from there.

3 But you don't know whether there was a news feed or  
4 something else.

5 **MR. PARASHARAMI:** No, I don't. This is something not  
6 in the record, your Honor.

7 **THE COURT:** All right. Well, it will be news feed,  
8 jewel and the emails.

9 Now, the emails you all are going to do, Mr. Williams.  
10 Okay?

11 Now, my next question is when can we get all of this done?  
12 It looked to me like -- can we get it out by May 30th? That's  
13 40 days before trial.

14 **MR. WILLIAMS:** I think that's right, your Honor. The  
15 papers -- defendant's papers made clear that they could get at  
16 least all of the email in a form that could be communicated to  
17 the administrator by next Friday, which is May 25th.

18 **THE COURT:** Is that right?

19 **MR. WILLIAMS:** Assume it goes over to Monday, you're  
20 at the 28th, which is at least two days before that.

21 **THE COURT:** Maybe you can have them work on the  
22 weekend.

23 **MR. WILLIAMS:** Oh, that's Facebook.

24 **THE COURT:** Okay.

25 **MR. WILLIAMS:** They are compiling all the email to



1 send and will have it all compiled by the end of next week. At  
2 least that's what's in their papers.

3 **THE COURT:** All right. So May 25th, unless something  
4 dramatic happens, will be a bankable date.

5 Yes.

6 **MR. PARASHARAMI:** Your Honor, just to be clear --

7 **THE COURT:** I really need you to move the microphone.  
8 Just put it right in front of you. Don't bend down. Just move  
9 it towards you, so you can stay upright and still speak.

10 **MR. PARASHARAMI:** Is this better?

11 **THE COURT:** No. Move it closer.

12 **MR. PARASHARAMI:** All right. Thanks. Thank you,  
13 your Honor.

14 I just wanted to --

15 **THE COURT:** That's better. Go ahead.

16 **MR. PARASHARAMI:** Okay. Just on the question of  
17 timing. You know, our declarant testified to what we could do  
18 under essentially the proposal that we had made, and so I just  
19 want to make clear that if -- you know, if it is some different  
20 set of people that we're supposed to identify, then this Friday  
21 date could never hold.

22 **THE COURT:** All right. Well, we can talk with that.

23 So it looked to me that, Facebook, you can go back -- so  
24 you have the IP address and some kind of advertising placement  
25 technology to find people, right?

1           **MR. PARASHARAMI:** Essentially we have something that  
2 we use to predict the home location of users, and that's what  
3 we use in our advertising processes.

4           **THE COURT:** All right. So you can use both  
5 techniques back to January of 2012 and then IP addresses only  
6 for 2011 and 2012.

7           **MR. PARASHARAMI:** That's essentially right, your  
8 Honor.

9           **THE COURT:** Seems fine.  
10 Any problem with that, Mr. Williams?

11           **MR. WILLIAMS:** Not for locating the email address,  
12 no.

13           **THE COURT:** Okay.

14           **MR. WILLIAMS:** And if --

15           **MR. PARASHARAMI:** And -- oh, I'm sorry, Sean.

16           **MR. WILLIAMS:** Go ahead.

17           **MR. PARASHARAMI:** Just to be clear, your Honor, the  
18 idea would be to try to identify individuals who are -- who are  
19 users that are residents of Illinois for purposes of  
20 identifying and are an over-inclusive, but appropriately  
21 tailored group of notice recipients.

22           **THE COURT:** Yes. Now, let's talk about what I'm  
23 going to call the O'Hare problem. Okay?

24           So you're living in Colorado. You are a Facebook user.  
25 You're connecting through O'Hare. You're there for two hours.

1 As users often do, you check your Facebook to see what's  
2 happening in the 90 minutes that you are, you know, unavailable  
3 and then you leave.

4 Now, that will show an IP address for Illinois, but they  
5 are not going to be members of the class. They are residents  
6 of Colorado. So how are we going to deal with that?

7 **MR. WILLIAMS:** Well, two points there. On the  
8 residency issue, I do want to discuss that a little bit. It  
9 was one of the things that me and my colleagues and Facebook  
10 talked about over the weekend with respect to the content of  
11 the notice.

12 **THE COURT:** Okay.

13 **MR. WILLIAMS:** I think that is a difficult problem.  
14 I don't think it's a difficult -- well, let me back up.

15 I think that if that person who landed in Illinois for an  
16 hour, checks their Facebook page, maybe even opened up, took a  
17 selfie and uploaded it onto Facebook, that person is going to  
18 have a scan of their face geometry done and possibly a template  
19 created.

20 I think your Honor was very, very clear in its class  
21 certification order about the class definition being limited to  
22 people who had a template created and stored in Illinois. What  
23 the Court did not do was -- what the Court did not do was limit  
24 it to -- to residents.

25 **THE COURT:** It doesn't have to be stored in Illinois.

1           **MR. WILLIAMS:** Correct.

2           **THE COURT:** It just has to be people who had  
3 templates harvested from data.

4           **MR. WILLIAMS:** I misspoke.

5           **THE COURT:** Yes.

6           **MR. WILLIAMS:** I think that the Court did not limit  
7 it to people who were, quote/unquote, residents.

8           We don't really have a -- an issue with the term  
9 "resident" unless it becomes a requirement later that -- you  
10 know, in a proof of claim that a person must show that they  
11 were a legal resident in Illinois at the time that this  
12 violation occurred. So we just need to work through that.

13           **THE COURT:** I don't think we need to sort through  
14 that now. Let's be common-sensical about this. This is an  
15 Illinois state law for Illinois people. Okay?

16           So if you're passing through O'Hare or driving through  
17 Peoria, you're not an Illinois person subject to BIPA. That's  
18 all we're talking about. So how are you going to sort that  
19 out?

20           Facebook, can you do something?

21           **MR. PARASHARAMI:** Yes. Our proposal is to -- in  
22 coming up with this list of potential notice recipients, which  
23 we believe is over-inclusive, but appropriately tailored for  
24 purposes of notice, but our proposal is to look for people who  
25 have a predicted home location in the State of Illinois for a

1 substantial portion of a year. And to us that was a good way  
2 to come close to assessing residents. I mean --

3 **THE COURT:** Well, just let me jump in.

4 I don't want to have any game playing with "substantial  
5 portion." If they are there, they are there.

6 Now, I'm only talking about the O'Hare problem. I've  
7 intentionally called -- that's my term. I've intentionally  
8 called it that so you get the gist of what I'm trying to  
9 communicate.

10 If you are just passing through, you're not in the class.  
11 If you have lived there for a month, if you have lived there  
12 for two months, if you've lived there for any period of time  
13 and you're not just passing through, although you're not a  
14 lifetime resident, you are potentially part of the class.  
15 Okay?

16 So I don't want to find out that, you know, you all built  
17 in some eight-month limit, so that -- Facebook, you know, if  
18 you ran your parameters and if you aren't there for eight  
19 months, you're kicked out of the list. That I don't want to  
20 have happen.

21 So how are you going to define that substantial -- can  
22 you -- like a -- a week or less. How about that, Mr. Williams?

23 **MR. WILLIAMS:** That's fine. And that was the problem  
24 I was worried about.

25 **THE COURT:** We have to have some -- you need some

1 gatekeeping time; right?

2 **MR. PARASHARAMI:** Yeah. I wonder if that is,  
3 unfortunately, way too small just because of the --

4 **THE COURT:** Let's talk about that.

5 How about -- you know, it's possible you could be on a  
6 business trip or maybe a trial in the Northern District for two  
7 months. How about --

8 **MR. WILLIAMS:** I think it's fair to say just a month.  
9 If you're in Illinois for a month, that means that you have at  
10 least some business or social issue that requires you to be  
11 there, use the services of, you know, the state or city that  
12 are available to you. And even if you don't have a plan to  
13 stay forever or a year, that a month, I think, puts you in a  
14 position where you're actually -- you're there and it's a  
15 meaningful period of time.

16 **MR. PARASHARAMI:** There is sort of an indeterminacy  
17 to that that I think is problematic.

18 And I guess the other point I would make is that this a  
19 predicted home location. It's not as though we know for sure;  
20 right?

21 So I guess my take is that if it's a relatively short  
22 time, it's really not enough to know if they are there.

23 You know, I'm not trying to play games or anything like  
24 that. I think it makes sense to have something that is, you  
25 know, tied to other standards in the law.

1       So one example might be residency for tax purposes, which  
2       is --

3               **THE COURT:** That's a year, though. That's too long.

4               **MR. PARASHARAMI:** Well, often they say 100- -- you  
5       know, let's say over six months. 183 days is the IRS  
6       requirement, just as an example.

7       I mean, I think, to me, that might be better than the  
8       alternative of, like, one week or one month. There is --

9               **THE COURT:** Let's just think this through. Now, this  
10      is notice. Okay? This is not writing checks. There is -- a  
11      lot of things have to happen before that ever happens.

12      Now, it's okay to be -- throw a wider net, cast a wider  
13      net for notice. It may be that we use a shorter time period  
14      for notice, but should the day come -- and who knows, maybe it  
15      won't, but should the day come that claim forms get submitted,  
16      we tighten it up. And, you know, you -- if it's less than  
17      three months, we'll just presume you were a transient and  
18      you're not going to be eligible to get any of the damages that  
19      might be awarded.

20              **MR. WILLIAMS:** I think that makes sense.

21              **THE COURT:** We could do it that way.

22              **MR. WILLIAMS:** I think it makes sense. Wider in the  
23      beginning and narrow it later.

24              **THE COURT:** Okay. So -- yes.

25              **MR. PARASHARAMI:** I guess the other thing I would say

1 is that if we change the parameters, we just do need to have  
2 more time in order to effectuate that. I mean, you know, we --

3 **THE COURT:** You just push a different date in. I  
4 mean --

5 **MR. PARASHARAMI:** It's not just like pressing  
6 buttons. I think it would take a lot.

7 **THE COURT:** It's not just like pressing buttons?

8 **MR. PARASHARAMI:** Well, it might be like pressing a  
9 lot and lot and lot of buttons.

10 **THE COURT:** What else could it be but pressing  
11 buttons? You're Facebook.

12 **MR. PARASHARAMI:** Your Honor, I appreciate that. I  
13 guess maybe I should have been more -- more apt. It's not like  
14 pressing one button.

15 **THE COURT:** Fine. You have to change the algorithm  
16 or whatever.

17 **MR. PARASHARAMI:** So then I would, your Honor, ask  
18 for enough time to effectuate that. You know, I obviously will  
19 warrant that we will work with alacrity, but this is being  
20 developed for the first time --

21 **THE COURT:** We'll come back to timing at the end.  
22 Let's work out all these little things first.

23 So I'll tell you what. We'll reserve the claimant  
24 eligibility issue on location until we get to the claim stage,  
25 should that happen. Who knows? It may not.



1 And for notice purposes, let's just -- I think two months  
2 or less is not -- is presumptively transient. So, you know,  
3 more than 60 days will be the notice cut-off.

4 **MR. PARASHARAMI:** And, your Honor, so my take would  
5 be that that should be 60 continuous days, because otherwise if  
6 it's --

7 **THE COURT:** That's fine. I don't have a problem with  
8 that.

9 **MR. WILLIAMS:** Well, I guess one thing that we need  
10 to know is what -- what are the manners in which they are  
11 actually putting parameters around the search now.

12 **THE COURT:** You anticipated my next question.

13 So, Mr. Parasharami, just tell me, just generally, how is  
14 all this going to happen? How is that list going to get  
15 populated?

16 **MR. PARASHARAMI:** Well, so we attempt to look for  
17 what's called predicted home location, which is essentially  
18 this method that we use for advertising to try and predict, you  
19 know, for advertisers where somebody will be. What their home  
20 location is on a specific day. Right? And so I guess we would  
21 look for the number of hits, you know, for a number of days per  
22 person.

23 So it requires a complicated search. I'm no engineer, so  
24 I can't, you know, begin to understand what they do to get  
25 there, but I do understand --

1           **THE COURT:** Somehow I'm confident Facebook can do it.

2           But let me just ask this. This is all the existing  
3           technology. There is nothing different. For example, you'll  
4           just take what Facebook normally uses and just adapt it for  
5           this purpose.

6           **MR. PARASHARAMI:** Right. I guess the -- the  
7           predicted home location technology is existing technology. The  
8           process of searching for this, obviously, is not something it  
9           ordinarily has to do --

10          **THE COURT:** I understand. You're just tailoring  
11          existing search protocols for this project. Just like if I  
12          were Procter and Gamble, you would be tailoring it for Procter  
13          and Gamble.

14          You're just using pre-existing -- I want your assurance  
15          this is not a new, different or unusual software. This is what  
16          Facebook does in the ordinary course of business to get this  
17          information.

18          **MR. PARASHARAMI:** I understand your question, your  
19          Honor. I think it is accurate to say that the underlying  
20          information of predicted home location is part of our course of  
21          business.

22          The searching of it. The substantial engineering time  
23          needed to actually get this information pulled, the pulling of  
24          an email list, is not part of our ordinary course of business.

25          **THE COURT:** I understand. Of course not. This is

1 litigation. This isn't -- class action trials don't happen  
2 every day, even for Facebook.

3 Now, for the IP addresses, how are you going to harvest  
4 those?

5 **MR. PARASHARAMI:** That specific of how to do it is  
6 beyond my knowledge, but my understanding --

7 **THE COURT:** Just generally. What do you understand  
8 is going to happen?

9 **MR. PARASHARAMI:** I think we have data and we are  
10 going to look at that data. I mean, at that level -- the  
11 engineers understand it and, as I say, I think we can do it  
12 with reasonable speed.

13 **THE COURT:** All right. Okay. So we're going to set  
14 a target date of May 25th for this. All right?

15 Now, if there is any extraordinary problem, you can let me  
16 know, like, the day before and we'll see what we can do.

17 **MR. PARASHARAMI:** Your Honor, just to try and -- I  
18 think that given this time frame of the two months, I -- that  
19 has been -- you know, we're going to have to start on it. I  
20 just do not know that starting today, we can get it done by the  
21 25th.

22 I would ask, rather than us coming back to you on the 24th  
23 or 25th -- the 24th is three days from now, and saying --

24 **THE COURT:** Well, your declarant says they -- we're  
25 talking about what was in the declaration. He said he could do

1 it by the 25th. What's the problem?

2 **MR. WILLIAMS:** I think they said they already  
3 started.

4 **MR. PARASHARAMI:** Yeah. Started on, I think, a  
5 different time frame. So I just don't know. I think, your  
6 Honor, if we --

7 **THE COURT:** It's a mildly longer one. I mean, if you  
8 were doing six months, this is just now three months shorter.

9 **MR. PARASHARAMI:** Yeah. If we have to restart our  
10 work in order to do it, then that might expand the time.

11 **THE COURT:** I will be surprised, but you ask and  
12 figure that out. But all we're doing is the -- literally the  
13 only thing we're doing is, apparently, starting a little bit  
14 earlier than you might have. That's all. Maybe they did start  
15 earlier. Who knows?

16 **MR. PARASHARAMI:** Right. So I'm saying we would have  
17 to start the search now, as opposed to having already tried to  
18 start work on this.

19 **THE COURT:** All right. May 25th is going to be the  
20 target date. You let me know if there is any problem with  
21 that. We're going to shoot to get everything out by May 30th.  
22 Okay? That will give us 40 days before trial.

23 All right. Now, I do want to -- then you all can raise  
24 any other issues you want to, but let's just go over the long  
25 form notice as amended in the, what is it, reply filing,

1 Mr. Williams?

2 **MR. WILLIAMS:** We filed a declaration on Friday  
3 afternoon.

4 **THE COURT:** Yes, that one. I want to use that one.  
5 Okay.

6 **MR. WILLIAMS:** I think it's docket -- the red line is  
7 381-2, if that's helpful.

8 **THE COURT:** Let's actually take the original un-red  
9 lined one, 381-1, which is plaintiff's revised long form  
10 notice. Let's just go through it.

11 There are a couple of changes I'm going to make and then  
12 we can discuss whether other changes need to be made as well.  
13 So on Page 1, that all looked fine to me.

14 Mr. Parasharami, any problems with that?

15 **MR. PARASHARAMI:** I'm sorry. You're looking at  
16 380 --

17 **THE COURT:** 381-1, the long form notice, called  
18 Exhibit A.

19 **MR. WILLIAMS:** 381-1 was filed on May 18.

20 **THE COURT:** May 18.

21 Maybe you two can share?

22 **MR. WILLIAMS:** That's fine. I don't have my winning  
23 case notes here.

24 **THE COURT:** Exhibit A.

25 **MR. WILLIAMS:** 381-1 is the clean version. 381-2 is

1 the red line.

2 (Whereupon document was tendered to counsel.)

3 **MR. PARASHARAMI:** Oh, thanks. Appreciate it.

4 **THE COURT:** Okay. Page 1 seems fine.

5 Any problem with that, Mr. Parasharami?

6 **MR. PARASHARAMI:** Your Honor, we -- we do, you know,  
7 for -- you know, I guess -- I think an appropriate --  
8 especially since we have some time, but what I would propose is  
9 that we submit --

10 **THE COURT:** No, we're just going to do it now. Let's  
11 get this thing done.

12 Look, this is one of my oldest cases. Okay? We can't  
13 keep pushing things down the road. The time for trial has  
14 come. You're here. I'm here. I've got a million other things  
15 to do. Trust me, I have a lot more than you do. Let's just  
16 finish this now. Okay?

17 **MR. PARASHARAMI:** I appreciate, your Honor --

18 **THE COURT:** So any problems that are not in your  
19 brief? Any objections to Page 1?

20 **MR. PARASHARAMI:** Yeah. Our concern is that the use  
21 of the phrase "biometric data" is inaccurate because it doesn't  
22 appear in the statute. It's not what the claims are --

23 **THE COURT:** What do you want, "biometric  
24 information"?

25 **MR. PARASHARAMI:** "Identifiers," your Honor. That's

1 the phrase in the statute and that's the -- that's the phrase  
2 that they are -- that the plaintiffs are actually litigating.

3 **THE COURT:** This has no legal interpretive effect.  
4 You understand that? So this is just telling people in the  
5 world in a practical and reasonable way what the case is about.

6 I think that idea of identifiers, it's not going to tie  
7 your hands. It's not going to tie anybody's hands. It's  
8 certainly not going to tie my hands. We just want to  
9 communicate to people in a way that they understand.

10 I'm going to overrule that. "Data" is fine. That is not  
11 an interpretation of BIPA. It is not meant to be a statement  
12 of law. You know that. This is just telling folks in the  
13 world: Hey, maybe I should do something. Okay?

14 **MR. PARASHARAMI:** I think that the problem is it  
15 misstates the claims, and Rule 23(c)(2) requires an accurate  
16 statement of --

17 **THE COURT:** It is accurate, Mr. Parasharami. Trust  
18 me. I have been writing Facebook order after Facebook order  
19 for the last two months. All right? This thing is going to  
20 get done.

21 So if you want to say "information" because you don't like  
22 the word "data," that's fine. It does not have to slavishly  
23 follow the statute to be accurate and informative.

24 Now, what do you want to say if you don't like the word  
25 "data"? Would you prefer to say "information"?

1           **MR. PARASHARAMI:** Umm --

2           **THE COURT:** "Materials"?

3           I don't know why the word "data" is objectionable, but if  
4           you don't like it, I will entertain a substitute.

5           **MR. PARASHARAMI:** Yeah. I --

6           **THE COURT:** "Stuff."

7           **MR. PARASHARAMI:** Oh, no. I --

8           **THE COURT:** "Your face," how about that? "Stored  
9           your face."

10          **MR. PARASHARAMI:** Yeah, I don't think that's quite  
11          right. I think -- do we prefer "information"?

12          **MS. GOLDMAN:** Yes.

13          **MR. PARASHARAMI:** "Information."

14          **THE COURT:** "Information," okay.

15          Mr. Williams, do you have any problem with that?

16          **MR. WILLIAMS:** No.

17          **THE COURT:** That will be changed to "information."

18          Okay. Anything else on Page 1, Mr. Parasharami?

19          **MR. PARASHARAMI:** Yeah. I think -- I think  
20          throughout where there are references to "in Illinois," and  
21          this is a global problem with the notice, it should refer to  
22          "residents."

23          I think that, you know, the Court has said in its class  
24          certification order, the order granting class certification,  
25          that the class consists of Illinois residents; that it is not a



1 class of Illinois non-residents.

2 **MR. WILLIAMS:** That's inaccurate.

3 **MR. PARASHARAMI:** Well, on Page 13 it says -- the  
4 order says that this is not a class of Illinois non-residents.

5 **MR. WILLIAMS:** Your Honor, what he's referring to on  
6 Page 13 of the order -- first, the class definition is:

7 "Facebook users located in Illinois for whom  
8 Facebook created and stored a face template after  
9 June 7, 2011."

10 That's on Page 15.

11 Page 13, that Mr. Parasharami is referring to, is a page  
12 where your Honor was discussing the extraterritoriality issue  
13 and actually -- and the Avery case, which -- in which case the  
14 issue was plaintiffs who brought suit under an Illinois  
15 statute, but lived outside of Illinois. And you are  
16 distinguishing that set of circumstances --

17 **THE COURT:** I remember that all quite clearly.

18 Why don't we do this? I did say "located." Why don't we  
19 say, "If you are a Facebook user located in Illinois"?

20 **MR. WILLIAMS:** That's fine.

21 **THE COURT:** Okay? Make that change throughout.

22 Okay? So, for example, starting in that bold language at the  
23 top and then elsewhere. Okay?

24 **MR. PARASHARAMI:** Your Honor, just on that point. It  
25 does seem like based -- the order said none of the class

1 members are non-residents, and I just think that it could be  
2 misleading to people, to the extent that if they believe  
3 that -- that there is some sort of broader criteria, you know,  
4 located in what captured your O'Hare example. And I think that  
5 would be very confusing to potential recipients of this.

6 **THE COURT:** I think that's -- I'm not worried that  
7 that's going to be confusing.

8 So we'll -- we'll meet you halfway there, Mr. Parasharami.  
9 We will say "located in." Mainly to stay consistent with the  
10 definition that's in the next paragraph.

11 Okay. Any other concerns about Page 1?

12 Mr. Williams, you need to just take notes or have somebody  
13 on your team take notes so we can make all this good. Okay?

14 All right. Anything else?

15 (No response.)

16 **THE COURT:** Page 2 is just the Table of Contents.  
17 Anything there?

18 **MR. PARASHARAMI:** So, no, we don't have a problem  
19 with that.

20 **THE COURT:** Okay. Page 3. I am changing Section 1  
21 to -- we're going to delete entirely the sentence, "The trial  
22 will decide." Okay?

23 So it should go from bracket date to my name. Take that  
24 middle sentence out.

25 And then in the second line "You have legal rights," say

1 "Before the Court holds a jury trial." All right? So add  
2 "jury" there and take out "the trial will decide" line.

3 Mr. Parasharami, any concerns about Page 3?

4 **MR. PARASHARAMI:** So I guess globally we've covered  
5 the change from "data" to "information"?

6 **THE COURT:** All right, yes. That will be made  
7 throughout, along with the "located."

8 Okay. Anything else?

9 **MR. PARASHARAMI:** Yeah. I think in the last sentence  
10 of 2, we think it's --

11 **THE COURT:** 2? Okay.

12 **MR. WILLIAMS:** Section 2.

13 **THE COURT:** Yes.

14 **MR. PARASHARAMI:** Section 2.

15 **THE COURT:** Yes.

16 **MR. PARASHARAMI:** We think it's important to instead  
17 of repeating the phrase about the "stored biometric data  
18 without prior consent," to identify the statutory requirement,  
19 which I'll agree is part of the requirement of being aggrieved  
20 by a violation of the statute.

21 **THE COURT:** All right. So what are you asking?

22 **MR. PARASHARAMI:** To delete -- where it says "any  
23 person in Illinois," and then delete "from" through "consent to  
24 aggrieved by a violation of the statute."

25 **MR. WILLIAMS:** I'm not sure I understand.

1           **THE COURT:** I don't see the word "from." Where is  
2 that? This is Paragraph 2, "What is this lawsuit about?"

3           **MR. PARASHARAMI:** So we would change after "BIPA  
4 allows any person in Illinois from."

5           **THE COURT:** The last sentence, I see. "BIPA allows  
6 any person in Illinois."

7           **MR. PARASHARAMI:** "Aggrieved by a violation of the  
8 statute," is what we would say in place of "from" through  
9 "without prior consent."

10          **THE COURT:** Can we just drop that last sentence  
11 entirely? Do we really need it? It seems a little duplicative  
12 of anything else.

13          **MR. WILLIAMS:** The reason we had it in there is  
14 because we felt we needed to actually explain the damages, the  
15 potential. But if that's out, we're comfortable with it.

16          **MR. PARASHARAMI:** We're fine with deleting the  
17 sentence.

18          **THE COURT:** All right. That last sentence will be  
19 deleted. Let's take that whole thing out and make it shorter  
20 anyway.

21          Okay. Anything else on Page 3?

22          **MR. PARASHARAMI:** I think -- I think in the first  
23 bullet on the response to -- the response No. 4, where it says,  
24 "who have been tagged in photographs and, thus, had face  
25 templates created."

1 I'm not sure that's entirely clear that that's right. And  
2 I would just cut "who have been tagged" --

3 **THE COURT:** How about if we drop all those bullet  
4 points? For notice purposes, do they really need --

5 **MR. PARASHARAMI:** That's fine.

6 **MR. WILLIAMS:** Don't need them.

7 **THE COURT:** All right. All the bullet points are  
8 out. All the little dot things will be out. Okay. That's  
9 good. All right. So that takes care of that.

10 Page 4. Any concerns, Mr. Parasharami?

11 **MR. PARASHARAMI:** So, again, the -- I think we're  
12 replacing "biometric data" with --

13 **THE COURT:** That's going to happen universally. So  
14 don't worry about that.

15 (Brief pause.)

16 **THE COURT:** All right. Nothing this?

17 **MR. PARASHARAMI:** Yeah. I -- we would like to  
18 supplement, and I just don't have language here, but six  
19 with -- you know, because I think if I understand right --

20 **THE COURT:** Six, okay. Yes.

21 **MR. PARASHARAMI:** Mr. Williams and I are probably  
22 going to submit after this a joint document that contains  
23 our -- our views of what this should look like for the Court's  
24 approval. So just -- you know, I think that might be a good  
25 way to proceed.

1 But with that, we want to provide a --

2 **THE COURT:** Can I tell you what I used to do when I  
3 was on your side of the case? I would just say: We disagree  
4 entirely and consider ourselves to be as innocent as the new  
5 lambs. I mean, how much more do you need to say?

6 **MR. PARASHARAMI:** I think with respect, I appreciate  
7 that, but we would like to communicate our point of view.

8 Can I -- I guess I can read into the record what our view  
9 would be for -- for six and --

10 **THE COURT:** I'll tell you what. Just work it out  
11 today.

12 **MR. PARASHARAMI:** Is that all right, your Honor --

13 **THE COURT:** Any reasonable statement. They can say  
14 whatever they want.

15 **MR. WILLIAMS:** One point I'd like to make there.

16 **THE COURT:** Yes.

17 **MR. WILLIAMS:** It's their position they want to say  
18 whatever they want, that's fine.

19 What they do want to add, though, which we talked about  
20 yesterday, which was that they have a current petition with the  
21 Ninth Circuit pending under 23(f). And I explained that, look,  
22 it's not in the Ninth Circuit. It's a petition and it's not --  
23 have relevance to any person that is going to be reading this  
24 for notice purposes.

25 And so we didn't think that that had any role in --

1           **THE COURT:** Well, I agree with that. You can just  
2 say -- we're talking about the merits here, okay, not  
3 procedural things. So just whatever you want to say on the  
4 merits.

5           **MR. WILLIAMS:** They can say whatever they want to  
6 say.

7           **THE COURT:** They can do whatever they like. If you  
8 have any objections, let me know. Okay?

9           Let's get that done by tomorrow -- I would like to have  
10 this back first thing tomorrow morning.

11           **MR. PARASHARAMI:** Your Honor, with that in mind, I  
12 think -- and we have been negotiating over the weekend. I  
13 think there might be some value in -- and I think we agreed on  
14 a lot of things, Sean, I think it's fair to say.

15           **MR. WILLIAMS:** Except last night wasn't quite an  
16 agreement.

17           **THE COURT:** Just talk to the Court not to each other.  
18 Talk to me.

19           What's the issue?

20           **MR. PARASHARAMI:** Your Honor, I think it might be  
21 appropriate for us to -- you know, if we can agree on certain  
22 other changes to this, we would put in it a red line for your  
23 Honor --

24           **THE COURT:** You can do whatever you want, but this is  
25 the baseline. Okay?

1           **MR. PARASHARAMI:** Sure.

2           **THE COURT:** If you want to riff on it some more,  
3 that's fine, as long as everybody agrees.

4           **MR. WILLIAMS:** And the changes that your Honor has  
5 suggested right now, we're fine with those.

6           **THE COURT:** Those are all mandatory. Okay? They're  
7 not to be negotiated.

8           Now, I do not want to see 15 other topics of this  
9 agreement. This is your time. So don't go home and think:  
10 I'm going to add 20 more points. We're getting this done now.

11           Now, I will let you negotiate your insert. That's fine.  
12 Okay? Now, if there is anything else you both agree on, that's  
13 fine, too.

14           **MR. PARASHARAMI:** And is that true throughout the  
15 document?

16           **THE COURT:** That's through for the entire notice.  
17 Okay? This is it. This is your show time.

18           **MR. PARASHARAMI:** Appreciate it, your Honor.

19           **THE COURT:** Okay. Anything else on Page 4?

20           (No response.)

21           **THE COURT:** All right. Page 5?

22           (Brief pause.)

23           **THE COURT:** Now, I have to say for number ten, I  
24 understand there is not going to be a website that  
25 automatically tells you. That's fine.



1 But I think the wording of this properly captures the fact  
2 that they will be notified later after all of the checking  
3 mechanisms are put into place and it's determined. So I don't  
4 have a problem with that.

5 **MR. PARASHARAMI:** Your Honor, on this we feel very --  
6 there is not going to be some process by which -- that can  
7 inform potential class members accurately whether they are  
8 class members or not. So that's a pretty important point.

9 **THE COURT:** I agree with that. But I think this  
10 notification just says go to this website, type your name in  
11 and we'll get back to you.

12 It doesn't say we're going to instantaneously determine  
13 whether you're a class member or not.

14 **MR. PARASHARAMI:** I think that -- at least if I were  
15 a class member reading that, I would think that by putting my  
16 information in, I would get some return at some point on  
17 whether I'm a class member or not. And that is typically --

18 **THE COURT:** It says you will be notified.

19 **MR. PARASHARAMI:** So that -- that essentially almost  
20 never happens in class actions. To my mind -- and I do a lot  
21 of class actions and class action notices. To me, this is both  
22 unheard of and, frankly, totally impractical. I don't think  
23 it's necessary to -- for purposes of understanding whether  
24 somebody should opt in or opt out.

25 I think the other problem with that is that if somebody is

1 choosing whether to exercise their due process right to opt out  
2 of the class, they might believe they could go to a website and  
3 actually provide that information.

4 This is -- at the end of the day if there is a trial in  
5 the case and, you know, a final resolution, there would always  
6 need to be a claims process in order to determine who is in the  
7 class. So I think this is wholly misleading.

8 I think striking it is -- would be useful. And, you know,  
9 I think we have --

10 **THE COURT:** Well, all right. I don't agree with any  
11 of that, but in the interests of expediency, can we just drop  
12 it?

13 **MR. WILLIAMS:** I don't think that it's misleading at  
14 all. I think it's helpful.

15 **THE COURT:** Why do we need it? Why do we need it?

16 **MR. WILLIAMS:** The only reason that we need it is so  
17 that class members or potential class members can go to the  
18 website and find out more about the case and whether or not  
19 they may be part of the class. It's more informative than  
20 anything else.

21 **MR. PARASHARAMI:** But I think throughout this  
22 document you're going to have places where you say: For more  
23 information about the class action, you know, look at this web  
24 page. This is specific about class membership.

25 **MR. WILLIAMS:** Your Honor, if you think -- if you

1 think it's --

2 **THE COURT:** Hold on, everybody. We've got plenty of  
3 time here.

4 Now, let me ask you this. Are you looking to harvest  
5 something from this cite that you need?

6 **MR. WILLIAMS:** No.

7 **THE COURT:** Any data or anything like that?

8 **MR. WILLIAMS:** No.

9 **THE COURT:** Okay. I thought maybe this was an effort  
10 to get extra clarity on who might be -- but it's not.

11 **MR. WILLIAMS:** Well, the -- the website and people  
12 logging in or putting their name and information in there and  
13 getting info about whether or not they may be in the class,  
14 that it's more helpful to the notice recipient than to us.

15 **MR. PARASHARAMI:** This is a website that can never  
16 really exist because there won't be a process for checking them  
17 against -- there is no class membership list to check against.  
18 And that's why I say I think it was -- and 11 is kind of the  
19 same way. They say "you will be notified" --

20 **THE COURT:** Slow down here. We are going to  
21 determine who has a face template. There is just no question.  
22 That is going to happen. It may not happen now for the notice  
23 period, but it is going to happen when we get to the claim  
24 stage should that day ever arise.

25 **MR. PARASHARAMI:** So I think that's a totally

1 different process and that including language about some -- you  
2 know, about some website now would be misleading because it  
3 would imply that you could find out before the claim is  
4 processed.

5 I agree that, you know, at the end of the day there will  
6 be a claims process. That should be delineated later, not in  
7 this notice.

8 It would be misleading to tell people -- I assume that the  
9 blank is a -- so if I may? That the blank is going to be the  
10 class notice website. That's typically what the blank refers  
11 to.

12 But that notice website, as -- you know, when somebody  
13 gets an email, if they click on this link, there is not going  
14 to be anything on that website that allows them to actually get  
15 information about whether they are in the class or not during  
16 the opt-out period.

17 And the whole purpose of notice is for people to be able  
18 to decide whether or not to opt out. That's sort of the  
19 touchstone of due process. So this is not just kind of a side  
20 issue. This is actually pretty important.

21 And, you know, I -- I think if we're going to, you know,  
22 take this seriously, we have to got to not include misleading  
23 information like this.

24 **MR. WILLIAMS:** I think I understand the issue now,  
25 your Honor. I had not heard this before.

1 I think that what Mr. Parasharami is suggesting is that --  
2 that this -- this suggests that you can go to a website now and  
3 determine if your name is going to be among those.

4 And I agree, that that's not -- I don't think that that's  
5 necessary. There won't be any information populated in there,  
6 in that website now about whether or not your name is --

7 **THE COURT:** I started off by saying yes. It says,  
8 we'll let you know later. But I thought it was to help define  
9 specifically people who might get missed otherwise, but you  
10 said no. So if you want to put in a general, "for more  
11 information, see..."

12 **MR. WILLIAMS:** "For more information." We can do  
13 that.

14 **THE COURT:** How about that?

15 **MR. WILLIAMS:** Yes.

16 **MR. PARASHARAMI:** I think that's the kind of thing  
17 that we could readily negotiate.

18 **THE COURT:** All right. So why don't you just redo 10  
19 and 11 and just make it: For more information, please see your  
20 cite. Okay?

21 **MR. PARASHARAMI:** Your Honor, I do think in 11 there  
22 is the potential to mislead people. And 10 as well, for that  
23 matter. But certainly in 11, in talking about whether you're  
24 in the class or not.

25 Just uploading one photograph might not be enough to put

1 you in the class. I think there should be some -- some  
2 qualifier, like, enough photographs just to make it clear.

3 **THE COURT:** You two try to work something out. I  
4 mean, I think 10 and 11 could probably just be one item.

5 **MR. WILLIAMS:** Can I be heard on this point, because  
6 it's one that we discussed yesterday.

7 **THE COURT:** Sure. Okay.

8 **MR. WILLIAMS:** Whether or not a person uploads enough  
9 photographs for a template to be created is an issue that a  
10 notice recipient is not going to understand. Frankly, it is --  
11 I don't even know that it's accurate.

12 So what defendants are suggesting is that in some  
13 instances you may have to upload more than one photograph or  
14 there needs to be more than one photograph of you in order for  
15 a template to be created.

16 That issue is going to come out at trial in one way or  
17 another. It's not necessary here at all.

18 **THE COURT:** I agree. Look. The way to approach  
19 notice is you have to have had at least one photo uploaded.  
20 That may not be enough. We'll see. Have to dispute this at  
21 trial maybe.

22 **MR. WILLIAMS:** Right.

23 **THE COURT:** But let's not -- we're not going to get  
24 into that now. Okay.

25 I think all of this can probably just be for more

1 information and to help you think about your rights, you know,  
2 something along those lines, and whether you want to stay in or  
3 stay out, you can go to this website or call you.

4 **MR. WILLIAMS:** That's right.

5 **THE COURT:** Not me. Call you. Okay? I'm not sure  
6 we say that enough actually. I know it's at the end, but think  
7 about maybe in the beginning when you mention my name, "Please  
8 do not call the Court." Ms. Clark and I would be very happy.  
9 Okay.

10 **MR. WILLIAMS:** Will do, your Honor.

11 **THE COURT:** All right.

12 **MR. PARASHARAMI:** This is something we can probably  
13 work out with Mr. Williams, but for -- if we're on number 12, I  
14 think that would be a good place to say "Do not contact  
15 Facebook or the Court."

16 **THE COURT:** That's fine. You can put that in, too.  
17 That's perfectly fine.

18 In fact, that probably is not a bad idea. Why don't you  
19 say, "Please do not email or do anything to Facebook because it  
20 will not be seen. You need to go through this process."

21 All right?

22 **MR. PARASHARAMI:** Right.

23 **THE COURT:** All right. Page 6. Oh, I do have -- the  
24 exclusion process, I think, is not adequate. We'll get to that  
25 in a moment.

1 Anything up to -- in the first paragraph or Paragraph 14  
2 on Page 6?

3 **MR. PARASHARAMI:** I don't believe so, in the first  
4 paragraph.

5 **THE COURT:** Nothing, okay. Paragraph 14.

6 **MR. PARASHARAMI:** Are we on the second paragraph?

7 **THE COURT:** Yeah, the one that's numbered 14.

8 **MR. PARASHARAMI:** Yeah. So we didn't have an issue  
9 in the first paragraph.

10 I guess on the second paragraph, I think that the last  
11 sentence of that paragraph is a little bit confusing.

12 **THE COURT:** "If you exclude."

13 **MR. PARASHARAMI:** It sort of presumes why somebody  
14 might exclude themselves, and it seems to give them, you know,  
15 legal advice, which I think is probably not the function of a  
16 class notice.

17 **THE COURT:** Why don't we just do this, "If you  
18 exclude yourself, you should talk to your own lawyer soon."  
19 How about that?

20 **MR. WILLIAMS:** That's fine with us, your Honor.

21 **THE COURT:** Let's just do that.

22 **MR. PARASHARAMI:** I think that's fine.

23 **THE COURT:** Okay? All right. So, "If you exclude  
24 yourself, you should talk..."

25 Now, 15, Mr. Williams, you went from the 21st century to



1 the 19th when you want to opt. I think U.S. mail is just  
2 not -- not the right technique. You need to have a click "opt  
3 me out," a -- you know, something easy. Do not go to a  
4 different website. Just something that can say, "Please  
5 exclude."

6 **MR. WILLIAMS:** We talked about that with the claims  
7 administrator over the weekend and this morning and that can be  
8 electronic.

9 **THE COURT:** All right. I think U.S. mail should be a  
10 last resort, if there at all. Okay? Because it's just -- in  
11 this day and age, and particularly for this case, it's not that  
12 suited. All right?

13 **MR. WILLIAMS:** Yes.

14 **THE COURT:** All right. You work that out.

15 Okay. Page 7? Anything on Page 7, Mr. Parasharami?

16 **MR. PARASHARAMI:** Yeah. My understanding is that  
17 plaintiff's counsel had some changes on their communications  
18 issues on Page -- on 16.

19 **THE COURT:** On which one?

20 **MR. PARASHARAMI:** On number 16, but I suspect we can  
21 work that all out.

22 **MR. WILLIAMS:** Oh, on 16 we're just going to change  
23 the telephone numbers. We have an 800 number that we would  
24 like to --

25 **THE COURT:** Oh, okay. Good. 1-800 number.

1           **MR. WILLIAMS:** Each firm has an 800 number that is --  
2 has people trained to answer questions related to the notice or  
3 questions from potential class members.

4           **THE COURT:** All right. Okay.

5           All right. Anything on Page 7? I do -- I'm going to  
6 change the trial section, but we'll -- anything before that,  
7 Mr. Parasharami?

8           **MR. PARASHARAMI:** No, not -- no.

9           **THE COURT:** On the trial, just -- let's have that  
10 entry sentence read, "The Court has scheduled a jury trial to  
11 begin on July 9, 2018."

12           Just take out the rest. End after 2018.

13           Okay. Anything else on Page 7, Mr. Parasharami?

14           **MR. PARASHARAMI:** No, not on -- not on the -- one  
15 second.

16           **THE COURT:** Anything on Page 8?

17           **MR. PARASHARAMI:** Sorry. I'm just comparing.

18           **THE COURT:** Yes, that's fine.

19           **MR. PARASHARAMI:** No.

20           **THE COURT:** Okay. Now, you two finish those little  
21 things you're going to work out. Get it to me by tomorrow  
22 morning and then tailor the short form to correspond to all the  
23 changes we made to this one. Okay?

24           **MR. WILLIAMS:** Will do.

25           **THE COURT:** All right. Anything else I can help you

1 with on notice?

2 **MR. PARASHARAMI:** I think we do want to talk about  
3 timing again, your Honor.

4 You know, we made -- I mean, first of all, obviously, we  
5 will do our best and we will keep the Court informed about  
6 creating the list of notice recipients. Obviously, as your  
7 Honor said, we will target the 25th.

8 We make clear in the declarations that we filed that a --  
9 that the news feed would take a week longer than that after the  
10 list is completed and that the jewel notifications would take  
11 two weeks longer than that. Just so your Honor is aware of  
12 that.

13 **THE COURT:** Why is that?

14 **MR. PARASHARAMI:** That was -- that was for the  
15 computing time and resources, engineering resources that would  
16 take to do it. We asked how long would that take, and that's  
17 what we were told.

18 **THE COURT:** Two weeks to post something on a jewel?

19 **MR. PARASHARAMI:** Yeah, because this isn't -- it's  
20 not something that we have just set up. It's not -- again,  
21 it's not like you press one button.

22 I appreciate that buttons are pressed, but lots and lots  
23 of buttons are pressed here.

24 **THE COURT:** How can it take two weeks to do that? I  
25 mean...

1           **MR. PARASHARAMI:** I mean, that is --

2           **THE COURT:** I didn't get that. I find it little  
3 counter-intuitive, to be honest.

4           But why does it take -- the jewel mechanism is set up.  
5 You've just got to populate the text box. Why does that take  
6 two weeks?

7           **MR. PARASHARAMI:** I just don't think that's how it  
8 works. And we can talk to the engineers and get you more  
9 detail. In the -- we had, as you know, almost no time to deal  
10 with these issues.

11           **THE COURT:** I really disagree with that  
12 characterization. It's just not right. You had plenty of  
13 time. We can take it down to 30 days and you still have plenty  
14 of time. So this is not -- and particularly for an online  
15 company that moves with alacrity when it chooses to in other  
16 circumstances, I find the time protestations to be a bit  
17 hollow.

18           Now, what I would like to do is understand why it takes  
19 two weeks to populate a jewel content. I don't get that. Do  
20 you know?

21           **MR. PARASHARAMI:** No. We talked to our engineers and  
22 asked them what would it take and that is what we were told.

23           **THE COURT:** I need more detail on that. I am  
24 skeptical, quite skeptical that Facebook cannot turn on less  
25 than two week's notice to post a jewel. That's what you're

1 telling me.

2 I'm going to hold you to that. And I'm finding it very,  
3 very hard to believe that there is an iron-clad algorithmic  
4 online law that Facebook cannot do a notice on less than two  
5 week's prep time. I'm very skeptical.

6 Now, maybe that's right, but I'm going to need to see some  
7 proof. I am going to remember that you told me that,  
8 Mr. Parasharami.

9 **MR. PARASHARAMI:** I appreciate that, your Honor. I  
10 wouldn't tell you that if I did not think --

11 **THE COURT:** You're not able to tell me the details  
12 why, which makes me concerned.

13 **MR. PARASHARAMI:** Yeah. Again, in sort of the time  
14 frame for trying to brief these issues in the last two to three  
15 days, or whatever it's been, we tried to get quick answers to  
16 how to accomplish this task.

17 **THE COURT:** All right. I want to see a detailed  
18 declaration from the engineer who does this explaining to me  
19 that it is literally impossible for Facebook under any  
20 circumstances to post a jewel notification on less than 14 days  
21 notice. That's what I expect to see. You get that to me by  
22 tomorrow at 5:00 p.m.

23 Now, what about the -- you said it took a week for what?

24 **MR. PARASHARAMI:** For the news feed.

25 **THE COURT:** I want the same declaration for the news

1 feed. I do not want generalities. I want specific  
2 understandings. And I want that person to say that they have  
3 never been able to do this before and it's literally impossible  
4 for Facebook to post anything in a jewel notice on less than  
5 two week's notice no matter what. And it is impossible for  
6 Facebook to post anything in the news feed on, what is it, less  
7 than seven days. That's what I expect to see.

8 **MR. PARASHARAMI:** I think that that's a -- I'll just  
9 be direct. I think that's a bit unfair. We asked for the best  
10 estimate of the time it would take and --

11 **THE COURT:** We're not talking about that. I'm  
12 talking about your representations to the Court,  
13 Mr. Parasharami, that Facebook could not do this on less than  
14 two week's time. I want to see the evidence for that.

15 That's what we're talking about, not the overall time in  
16 the case. I want to see the data behind that representation.

17 **MR. PARASHARAMI:** I just want to be clear --

18 **THE COURT:** I want to have an engineer tell me, under  
19 penalty of perjury, that it is literally impossible for  
20 Facebook to do that on less than two week's notice, because I  
21 am deeply skeptical.

22 **MR. PARASHARAMI:** So I want to be clear. I don't  
23 think I'm representing the words "literally impossible." What  
24 I was representing is what I understood is the time that they  
25 forecast it will take.

1 Do they -- I think it's not like it's been -- I just don't  
2 know the answer to that. I think that --

3 **THE COURT:** You told me two weeks. Now --

4 **MR. PARASHARAMI:** That's our best estimate. I think  
5 it's a legitimate --

6 **THE COURT:** I'm not going to accept a best estimate.  
7 When you tell me, as you did, that you cannot do it, no way, no  
8 how, on less than two week's notice, I want to see the evidence  
9 for that. I don't believe that's true. Now, it may be, and I  
10 may learn something, but I'm skeptical that that's true.

11 You get that to me tomorrow at 5:00, and you get the news  
12 feed one at the same time.

13 Anything else I can help you with?

14 **MR. PARASHARAMI:** On that issue, your Honor, i would  
15 just ask if I turns out -- and I'm not trying to be difficult  
16 here. If it turns out we can do it quicker, we will try, but I  
17 -- and then -- and we'll learn that.

18 But we gave the Court the best information we had at the  
19 time we filed these declarations, you know, at the Friday  
20 5:00 p.m. deadline.

21 **THE COURT:** We shall see, Mr. Parasharami.

22 Anything else I can help you with, Mr. Williams?

23 **MR. WILLIAMS:** Just one point, your Honor.

24 **THE COURT:** Yes.

25 **MR. WILLIAMS:** Actually two.

1 To the extent that you're satisfied with whatever you get  
2 from Facebook on those issues, it shouldn't stop whatever they  
3 can do quickly should get out. We can stagger some of those  
4 issues, to the extent the Court is willing to do that.

5 **THE COURT:** I will take a keen eye to the timeline.

6 **MR. WILLIAMS:** And the next issue is just one I'm  
7 anticipating due to correspondence I have had with defendants  
8 over the last few days.

9 So when we were here last a few weeks ago, we asked you  
10 about your standing order on civil trials and the timing of the  
11 obligations of the parties in exchanging information so that  
12 you had the information that you needed within, I think it's 14  
13 days of the pretrial conference.

14 **THE COURT:** Let me -- remind me when that is?

15 **MR. WILLIAMS:** It's June 14th. Pretrial conference  
16 is June 14th.

17 **THE COURT:** Oh, okay. Yes.

18 **MR. WILLIAMS:** So that requires you to have the  
19 documents that you need by May 31st.

20 **THE COURT:** Yes.

21 **MR. WILLIAMS:** We met-and-conferred on May 2nd or 3rd  
22 regarding, you know, Exhibit Lists, Witness Lists, things that  
23 are going to require us to really talk about to get the  
24 documents before you in the form that you need them.

25 Last week we -- we agreed to exchange that information on



1 May 17th or 18th at the latest and plaintiffs have served their  
2 Motions in Limine, the Exhibit List, the Witness List and other  
3 materials to invite correspondence and discussion on those  
4 matters so that we can get them, you know, together.

5 We got a response from Facebook saying that they needed  
6 another five or six business days to do their exchange. So we  
7 haven't received anything other than Motions in Limine from  
8 them yet and so there is no work that can get done.

9 Last night I got an email from Facebook saying that they  
10 may raise this issue with you to get more time to do the  
11 exchanges, but they would like to do it in a way that doesn't  
12 affect the trial date, but it might affect the date on which  
13 you get the materials in order to make decisions about  
14 admissibility and things of that nature.

15 **THE COURT:** How many do you have? For example, how  
16 many Motions in Limine do you have?

17 **MR. WILLIAMS:** Well, your limit was eight. We  
18 served --

19 **THE COURT:** You hit the limit?

20 **MR. WILLIAMS:** Yeah. We served --

21 **THE COURT:** You hit the limit.

22 **MR. WILLIAMS:** We hit the limit. They served six. I  
23 think there are probably three of those that we'll work out.

24 **THE COURT:** I know you know, because you're an  
25 experienced trial lawyer, you both are, it's just evidentiary

1 objections. Okay? It's not -- they are not mini summary  
2 judgments. We are not covert *Daubert* motions. It's just:  
3 This category of documents or this type of testimony should be  
4 excluded because --

5 **MR. WILLIAMS:** We're true to that.

6 **THE COURT:** -- it's character evidence, or something  
7 like that. You had eight of those.

8 **MR. WILLIAMS:** We were true to that. I think that  
9 once --

10 **THE COURT:** Can you give me a sample? Just a high  
11 level -- what are some of the issues that's your evidentiary  
12 problems?

13 **MR. WILLIAMS:** One of the issues is, for example, the  
14 admissibility of documents related to the Irish Data Protection  
15 Commission, which had audited Facebook in 2011 and 2012,  
16 particularly about the privacy issues and the way they were  
17 collecting biometric data.

18 **THE COURT:** All right.

19 **MR. WILLIAMS:** That's one thing we expect to be an  
20 issue.

21 **THE COURT:** Okay.

22 **MR. WILLIAMS:** The next issue is the acquisition of  
23 face.com, and issues around that. They have taken the position  
24 in pleadings that the facial recognition data --

25 **THE COURT:** I just wanted a flavor. That's good.

1 Okay. Sounds like you did the right thing on the motions.

2 You'll have plenty of time to argue that.

3 **MR. WILLIAMS:** But I think -- we did hit the limit of  
4 eight, but I do think that we will be able to work out some of  
5 them so that it comes down to maybe five --

6 **THE COURT:** All right.

7 **MR. WILLIAMS:** -- or six.

8 **THE COURT:** Okay.

9 **MR. WILLIAMS:** But the Motions in Limine are not the  
10 issue. It's the other things that have to be done. The Jury  
11 Instructions, the -- the proposed Jury Instructions, you know,  
12 the Exhibit Lists on negotiating admissibility and what that's  
13 going to look like.

14 If we're not getting the exchanges from Facebook, we're,  
15 you know, negotiating with ourselves and the time frame for us  
16 to reach those agreements is going to get much shorter.

17 **THE COURT:** Well, let me just jump in. I have been  
18 thinking about Jury Instructions. Now, I'm presuming Illinois  
19 does not have a model instruction for BIPA.

20 **MR. WILLIAMS:** No.

21 **THE COURT:** So this will be one of those rare  
22 circumstances where we're going to craft one. I don't think  
23 that will be terribly hard. I think that can be done in a page  
24 or two, maybe, and maybe some terms defined, as we do in the  
25 Jury Instructions. I'm not sure that's necessary, but I think

1 we could do that.

2 And then there will be an issue on damages. Zero damages,  
3 1,000 or 5,000. And I presume no one is attempting to prove  
4 actual damages.

5 **MR. WILLIAMS:** That's right.

6 **THE COURT:** Okay. So it's going to be statutory  
7 damages.

8 **MR. WILLIAMS:** That's right.

9 **THE COURT:** Okay. All right. So that's not an  
10 insurmountable task between now and June 14th.

11 **MR. WILLIAMS:** Between now and May 31st, because  
12 that's the date that we have to submit all the pretrial  
13 materials --

14 **THE COURT:** Ten days from today.

15 **MR. WILLIAMS:** -- including the trial brief.

16 There is a lot to be done. And unless it's a two-way  
17 street, it's not going to get done. And we don't want to be  
18 jammed in making those decisions, as they now have all of our  
19 materials to just sit on and sort of evaluate and provide us  
20 with their responses or their positions whenever they get  
21 comfortable with it.

22 **THE COURT:** All right. Let's hear from Facebook.

23 Mr. Connelly.

24 **MR. CONNELLY:** Judge, I'm going to accentuate the  
25 positives. We're getting closer to trial, as you might expect.

1 You know, that's --

2 **THE COURT:** These things happen.

3 **MR. CONNELLY:** You have to search a little bit for  
4 the positive, but there have been good faith communications  
5 between the parties trying to narrow the issues.

6 The -- and the deadline for both parties is May 31st to be  
7 done with it. That would then let you have all of the  
8 materials two weeks in advance of June 14th.

9 **THE COURT:** Yes.

10 **MR. CONNELLY:** What Facebook has been suggesting is,  
11 look, let's keep talking, but we're getting crunched. We'll  
12 all do a better job if rather than -- rather than submitting  
13 everything to the Court on May 31st, give us three extra  
14 business days, which would push it out til June 5th.

15 Now, full disclosure, Judge --

16 **THE COURT:** Three actual business days.

17 **MR. CONNELLY:** Yeah. We would like to have the  
18 filing on June 5th. Full disclosure that the Court can easily  
19 back into itself. That tightens it up a little bit in terms of  
20 when the Court gets everything filed on June 5th for the  
21 June 14th hearing, but that's our suggestion.

22 Again, not for purposes of delay, but really, frankly, so  
23 that we can -- as you can understand, a case of this magnitude,  
24 there are certain layers of review and getting client approval,  
25 so that we can continue to talk with the Plaintiffs -- I'm

1     sorry, with the other side in total, as far as let's see how  
2     much we can hit common ground on.

3             **THE COURT:** And this would be to make my life easier.

4             **MR. CONNELLY:** Yours and ours both.

5             **THE COURT:** All right. June 5th?

6             **MR. CONNELLY:** That's our suggestion.

7             **THE COURT:** All right. I can accept that, 5:00 p.m.  
8     California time June 5th. Just have it all in by 5:00 p.m.  
9     California time on June 5th. And this is with an eye towards  
10    streamlining the issues, the extra time.

11            **MR. CONNELLY:** One last point, Judge, unrelated to  
12    this issue, but as long as I'm up here.

13            **THE COURT:** Yes.

14            **MR. CONNELLY:** And I think it's pretty clear that the  
15    Court has denied or plans to deny Facebook's request to stay  
16    the proceedings while we have the petition before the Ninth  
17    Circuit. I just --

18            **THE COURT:** I haven't even gotten the opposition to  
19    that yet.

20            **MR. WILLIAMS:** The opposition is due today.

21            **THE COURT:** I have not taken a look at it.

22            **MR. CONNELLY:** I'm sorry.

23            **THE COURT:** I have so much to do. Until things are  
24    submitted, I really don't -- I just -- I wish I had time to  
25    kind of read the things as they come in. I don't. It's just

1 not practical for a district judge.

2 **MR. WILLIAMS:** Can I make one more point, your Honor,  
3 because there is one expectation.

4 **THE COURT:** Yes.

5 **MR. WILLIAMS:** You know, your class certification  
6 order, obviously, focuses on the face templates. And the --  
7 the number of face templates that Facebook has either created  
8 in Illinois is obviously going to be at issue in the case, one  
9 of the primary issues, a number of them.

10 We asked for that number in discovery many times. We  
11 actually came to the Court at one point to -- on a Motion to  
12 Compel and the Court ordered to us meet-and-confer, and the  
13 promise was they would get something to us in the form of a  
14 stipulation what the number of face templates are. They have  
15 the number. We think it's somewhere around 7 million, maybe  
16 slightly less than that.

17 But I don't see how we can go forward until they produce  
18 that number. And it doesn't have to be today, but your Honor  
19 is going to need it. We're going to need it.

20 We've asked for it. We're entitled to it. They have it.  
21 It may come up in papers before you, but I don't see any reason  
22 why it's not something that hasn't been provided, you know,  
23 forthwith.

24 **THE COURT:** So it's not subject to some fact disputes  
25 at trial?

1           **MR. WILLIAMS:** How many face templates they have?

2           **THE COURT:** Yes.

3           **MR. WILLIAMS:** I don't think so. I don't think  
4 it's -- the number is really going to be a fact dispute, but  
5 because we asked for the number, they have it. It's kind of a  
6 discovery issue that never got resolved.

7           **THE COURT:** I take it you want to say in opening  
8 statement -- you want to use the number in opening statement?  
9 Is that the issue?

10          **MR. WILLIAMS:** I may.

11          **THE COURT:** Okay. I thought it was disputed, the  
12 number of templates.

13          Is that right, Mr. Connelly?

14          **MR. CONNELLY:** Well, yes. I think -- that's a fair  
15 statement.

16          **THE COURT:** All right. Well --

17          **MR. CONNELLY:** Although I appreciate what counsel is  
18 saying.

19          Again, I haven't been personally engaged in this process.  
20 I will take a deep dive into it to find out whether or not that  
21 number can be made available and if not, why it can't be made  
22 available.

23          **THE COURT:** To be honest, it actually -- as you have  
24 suggested with an eye towards streamlining pretrial prep, if  
25 that's something you can just stipulate to, you can just make



1 it a stipulation of fact. Okay? That would -- if it's not  
2 controversial and you all are happy with it, let's just do  
3 that.

4 **MR. WILLIAMS:** It will be controversial because the  
5 number will have some impact on the damages issue, which is why  
6 they haven't -- in my view, why they haven't produced the  
7 number even though we've asked for it a number of times.

8 Ultimately what you'll hear from us, your Honor, is that  
9 to the extent that they are unwilling to provide the number of  
10 face templates, then our position will be that they should not  
11 be able to present evidence to the Court or to a jury that it's  
12 anything less than the number of users in Illinois.

13 **THE COURT:** Well, I think that's going a little far  
14 now. Why don't you two see what you can work out?

15 I was under the impression that the -- populating the  
16 exact count of templates was something that may turn on the  
17 evidence at trial. If that's wrong, you can tell me. If it's  
18 right, you can certainly say "we believe it's millions" in the  
19 opening and go from there. Whatever you want.

20 You can make your argument. There may be a consequence if  
21 you overstate, but that's up to you.

22 **MR. WILLIAMS:** Which is why we asked for the number  
23 in discovery and they haven't produced it.

24 **THE COURT:** Okay. Well, you two will -- why don't  
25 you address that? If you can't resolve it in the next couple

1 days, just let me know.

2 **MR. CONNELLY:** Two other, hopefully, quick items from  
3 Facebook, one from me and one from Archis.

4 **THE COURT:** Yes.

5 **MR. CONNELLY:** I think that the hearing on the  
6 request for a stay is set for June 21st. And I would suggest  
7 in order for everybody to keep that July 9th date, if it's  
8 possible, if it's convenient for everyone, to try to move that  
9 hearing a little up, have it sooner than June 21st, if that's  
10 possible.

11 I appreciate that the Court hasn't had a chance to take a  
12 look at all the papers, so I'm just -- I'm raising that as a  
13 possibility.

14 **THE COURT:** I haven't looked at them all. I  
15 certainly haven't gotten an opposition.

16 If you two want to propose an earlier date, I will  
17 consider it. I have another trial coming up -- actually, I  
18 have two other trials coming up.

19 **THE CLERK:** June 14th.

20 **MR. WILLIAMS:** I thought it with as June 14 as well,  
21 which is --

22 **THE CLERK:** It is.

23 **THE COURT:** Oh, June 14th.

24 **MR. WILLIAMS:** Which is when --

25 **THE COURT:** I really doubt -- well, I mean, if you

1 want to work it out, I will see if I can do it. June 14th is,  
2 what, two weeks away now, three weeks away?

3 If you want to do it, see what you can work out. Okay?

4 **MR. CONNELLY:** Very good.

5 **THE COURT:** Now, one other thing. I -- I have  
6 forgotten. Okay. Anything else?

7 **MR. WILLIAMS:** Nothing, your Honor.

8 **THE COURT:** Mr. Connelly?

9 **MR. CONNELLY:** I think the last question on notice.

10 **THE COURT:** Yes.

11 **MR. PARASHARAMI:** Just one last point. We had  
12 addressed it in the briefs, but had not gotten to it here,  
13 which is that the rules are basically that the plaintiff has to  
14 pay for the cost of class notice. That's under *Eisen* and  
15 *Oppenheimer*.

16 So we would like the Court to clarify that the cost of  
17 notice that we experience in putting together this information  
18 has to --

19 **THE COURT:** Generally, the plaintiff pays the class  
20 notice. If the cost is insubstantial and it's not worth the  
21 time and effort, then you typically don't. I will have to see  
22 some firm documentation on what the extra expenses will be and  
23 then we'll talk about it.

24 **MR. PARASHARAMI:** Okay. Thank you, your Honor.

25 **THE COURT:** Okay? You get those declarations to me

1 by 5:00 p.m. tomorrow.

2 Okay. Thank you.

3 **MR. WILLIAMS:** Thank you, your Honor.

4 **THE CLERK:** All rise. Court is in recess.

5 (Proceedings adjourned.)

CERTIFICATE OF OFFICIAL REPORTER

I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

*Debra L. Pas*

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Debra L. Pas, CSR 11916, CRR, RMR, RPR

Tuesday, May 22, 2018